IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3260 OF 2007
IN
SUIT NO.398 OF 1994

Hindustan Photo Films Mfg.Co.Ltd. ....Plaintiff
V/s.
ICICI Bank Ltd. ....Defendant

Mr.V.V.Walawalkar with Ms.Priti Bakalkar i/b Crawford Bayley & Co. for the Plaintiff.

Mr.Kirit Mody i/b Little & Co. for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 3RD DECEMBER, 2007.

P.C. :

1. This is the Plaintiff's Notice of Motion to strike off issue No.9 framed by the learned Judge under Order XIV Rule 5 of CPC and in the alternative to reframe the said issue.

2. The objections were raised before the learned Judge about the manner in which the issue was to be framed. After hearing the counsel, the learned Judge framed issue No.9 as under :-

> "9. Whether the plaintiffs prove that they are entitled to recover from R.C.C. a sum of

Rs.2,19,03,195.73 as on date of alleged invocation of guarantee as alleged in para 9 of the plaint ?"

3. Apart from the fact that the objections to the issue were already raised, considered and decided, I am not inclined to allow this Notice of Motion. The Plaintiff averred in paragraph 9 of the plaint that the amount was due and payable by RCC to it. The Defendant being the issuing bank has stated in the written statement that it is not aware of the same and has therefore denied the same. The issue therefore certainly arises.

4. It must be clarified that it is always open to the Plaintiff to argue that in order to succeed in the suit, it is not necessary that the Plaintiff establishes issue No.9. In other words, it is always open to the Plaintiff to argue that even if issue No.9 is not established, it is entitled to recover the amounts claimed in the suit in view of the law relating to guarantees.

5. With the aforesaid clarifications, the Notice of Motion is dismissed.